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Britain's European Futures? Reflections from a Seminar Discussion

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Following a recent seminar and panel discussion on the UK's EU renegotiation and referendum, Drew Scott reflects on the prospects for Britain's relationship with the EU. He writes that, with the uncertainty surrounding the role the UK wants to play in Europe, the ultimate positions of the other EU Member States in the renegotiation and the possibilities after the referendum, it is difficult to predict Britain's European future.

On 6 July 2015, the [Edinburgh Europa Institute](#), in conjunction with the [Scottish Government](#), convened a seminar to discuss *Britain's European Futures*. The seminar was followed by a public [panel discussion](#). The main themes of the seminar were: the UK renegotiation agenda; the perspective from EU partner countries; and the UK referendum and Britain's competing European futures.

A key input to the seminar discussion was a new publication by the Dublin based [Institute of International and European Affairs](#) entitled [Britain and Europe: The Endgame](#) edited by Daithi O'Ceallaigh and Paul Gillespie. As has been made clear by a number of Irish politicians, Britain's EU future has considerable significance for Ireland – arguably more so than any other EU Member State.

The edited collection develops this theme, and presents a retrospective and prospective review of the questions that face the UK, Ireland and, indeed, the wider EU in what will be a defining moment – the 'Endgame' of the volume's title – in Britain's often fractious relationship with its EU partners. It is a publication that deserves the widest possible readership.

Renegotiation Agenda

Prime Minister David Cameron has not yet set out a detailed list of 'asks' in the renegotiation process. That process formally began following the June meeting of the European Council, the [conclusions](#) from which stated:

The UK Prime Minister set out his plans for an (in/out) referendum in the UK. The European Council agreed to revert to the matter in December.

However, we do know from both the Prime Minister and Chancellor George Osborne that the issues under consideration include (i) securing a UK opt-out from the principle of 'ever closer union among the *peoples* of Europe' (contained in the

preamble to the EU treaties); (ii) strengthening the role of national parliaments in the EU legislative process; (iii) curtailing the right of migrant workers from other EU Member States to specific welfare entitlements (including in-work benefits); and (iv) protecting the Single Market interests of non-Eurozone countries, especially in the area of financial services.

Achieving these aims will require not only political support across the EU but also – in the case of objectives (i) and (iii) – reform of the EU treaties (and subsequent ratification in the national parliaments of all 28 Member States).

The discussion around these themes led to a number of broad conclusions. First, opting out of the ‘ever closer union...’ recital *will* require treaty change, but will have no material impact on UK membership insofar as it is a broad political framing statement with no direct legal effect on the UK’s terms of EU membership.

Second, strengthening the role of national parliaments in the EU legislative process – for instance by improving the current ‘yellow card’ procedure and/or introducing a ‘red card’ – is unlikely to gain support if it threatened to undermine the current EU legislative system and risk a return to a national veto arrangement.

Third, prospective reforms regarding migrant workers’ eligibility for benefits in the UK is highly controversial as it both challenges a central pillar of the EU Single Market (the free movement of labour) *and* ignores the (complex) politics of labour mobility in the Member States from which migrant workers originate.

Fourth, the UK demands are seen as being highly UK-centric and have little resonance elsewhere in the EU. Indeed, some consider PM Cameron to be serving not UK interests, but the much narrower interests of the British Conservative Party. Moreover, Britain’s failure to engage fully in other EU crisis situations (*eg* Ukraine and the ongoing Mediterranean migration calamity) is costing the UK vital political capital that could otherwise be used to help secure Cameron’s reform objectives.

Fifth, even if the concessions being sought are agreed, it is inconceivable that an EU treaty reform process (if required) could be completed ahead of the end-2017 deadline. The suggestion by the Prime Minister that agreements could be made in principle, to be ratified after the UK referendum, was noted. However, such a ‘postdated cheque’ does not seem to be legally watertight, particularly as some Member States – such as Ireland – would require a referendum on EU treaty reform, the result of which cannot be predicted.

The *Financial Times* of 27 July 2015 carried an [interview with Irish Ambassador to the UK Daniel Mulhall](#) suggesting the Irish Protocol to the Lisbon Treaty, which was agreed in 2009 but not ratified until 2013 (at the same time as the Croatian accession treaty), could be a precedent the UK could follow in securing binding agreement for a future EU treaty amendment.

However, that Protocol did not substantively change Ireland’s obligations under the Lisbon Treaty, but rather set out in clear language the general limitations of the Lisbon Treaty across a range of issues of particular importance to Irish citizens. If conceded, elements of the UK Government’s proposals for reform would most likely

alter the substance of the EU treaties, at least as they apply to the UK, and it is difficult to envisage a mechanism that could *guarantee* ratification of these by all national parliaments at a later date.

There is also the broader question of what role the UK wants to play in Europe in the event a majority supports remaining inside the EU (*eg* leading on internal security and the Single Market) and whether the UK will work constructively within the framework of the renegotiated terms of membership. The Scottish Government has a clear [Agenda for EU Reform](#) and consistent messaging on the role it wants to play in Europe (see [Scotland's Action Plan for EU Engagement](#)), which it will continue to champion. The wider question, however, is to what extent the UK will be able to recover a position of influence within the EU legislative and policy architecture in the wake of the controversial renegotiation process.

Position of Other Member States and Institutions

David Cameron has recently engaged in a degree of shuttle diplomacy between EU capitals seeking support for his reforms. Although there is a shared sense of frustration that the UK is seeking yet more 'exceptional' treatment within the EU, there is no suggestion that Britain's EU membership has become untenable.

That does not mean negotiations will be either straightforward or costless. Any measure that would compromise the free movement of labour is unlikely to be acceptable, as would be a proposal to give greater weight to non-Eurozone countries in enacting legislation impacting on the single market for financial services.

While other elements of the UK proposals may be more readily agreed, bearing in mind there is no desire among other Member States for the UK to exit the EU, there is still a question as to what – if anything – the UK will be asked to concede in return. After all, just as in the case of the UK, all EU Member States will negotiate from the position of advancing their own national interests – national interest that is often more closely aligned with collective EU interest than is the case for the UK.

It is well-known that the view from Berlin will be pivotal in shaping outcome of the negotiations. While the German Government is unambiguously supportive of continued UK membership, that does not mean it stands ready to prevent Brexit at any cost. Elsewhere, views range from perplexity at the prospect of the UK leaving an EU Single Market that it has been hugely instrumental in shaping to deep anxiety of the impact of Brexit on national interest.

Nowhere is this anxiety more pronounced than in Ireland, for which Brexit would (i) create an external EU border running through the island, which would be of significant practical and symbolic importance; (ii) change the dynamic of Ireland's relationship with the UK, reverting back to a bilateral one and; (iii) impact adversely on the ongoing peace process. It is clear that the Irish Government will be a strong advocate for the UK remaining part of the EU. However, as one colleague suggested: "...it is hard to know what to do with a country that doesn't know what it wants to be."

Little attention thus far has been given to the role of the EU institutions in the Brexit debate, not least the European Parliament. At the very least, the European Parliament will be required to give its consent to a treaty revision process that does not involve establishing a Convention as set out under Article 48(3) [TEU](#), assuming any proposed revisions; (a) are deemed to be not sufficiently important as to require a Convention procedure *or* (b) can be accomplished under the (Article 48(6)) simplified (treaty) revision procedure.

Just how accommodating the European Parliament will be to UK demands is unclear, although it is unlikely to accept any proposal that would diminish its role as a lawmaker. This may prove a stumbling block to UK suggestions to reduce EU ‘red tape’ legislation and to give national parliaments greater authority (*eg* a ‘red card’) over EU legislative proposals.

At the same time, the public response to events in Greece suggest that the EU collectively risks losing part of its broader political legitimacy if it is seen to be unresponsive to the wishes and aspirations of its citizens. It is clear that many EU citizens outside Greece, including in the UK, have come to question not only the technical viability of the austerity measures ‘imposed’ on Greece but, more significantly, the moral and political legitimacy of what some regard as punitive measures.

The UK Referendum and Britain’s Competing European Futures

As with the recent Greek referendum, the precise mandate and consequences of the UK EU referendum are not as clear as one might wish. Although presented as a vote on the renegotiated terms of UK membership, the referendum will be a debate over competing versions of Britain’s ‘European future’.

One version sees the UK remaining inside the EU, albeit with little sense as yet of what ‘vision’ advocates of continued membership have vis-à-vis Britain’s role in the EU’s future. Today the notion – as championed by successive British Prime Ministers – of a Britain ‘at the heart of Europe’ is more likely to be a topic for lampooning journalists than for serious foreign policy debates. Instead, some regard UK influence within the EU to be in virtual free-fall, raising questions of how vital UK interests can best be advanced within the EU’s collective legislative and policy process.

The competing version sees Britain outside the EU but retaining very close trade and wider economic links with the bloc, comparable to – say – Norway or perhaps Switzerland. However, this version implicitly makes a range of assumptions about the nature of a post-membership deal that might, or might not, be on offer.

Although Article 50 TEU makes provision for a negotiated exit from the EU, it provides no guidance on the terms under which any future arrangement would be based. There is no *a priori* reason for assuming Brexit would be a ‘soft’ option. Indeed, it is already clear that should the UK opt to leave the EU, the negotiations would be tough and little quarter should be expected from the 27 remaining members – each of which will be determined to ensure their interests are reflected in a post-membership scenario.

The assumption that the UK could move seamlessly to membership of the [EEA](#) or benefit from the type of privileged deal offered to Switzerland ignores these political realities, as well as the fact that these arrangements were designed to accommodate small nations that may eventually join the EU rather than major economies like the UK intent on severing its EU membership.

Broader questions about the UK's influence in the global economy outside the EU are yet to be fully considered. Advocates of Brexit tend to assume the UK would be free to agree international trade agreements more suitable to its needs and more speedily than is possible with EU membership. Any such international trade agreement that lay outside EU trade agreements would of course necessitate the reintroduction of physical trade barriers (border posts) between the UK and the EU to insure against trade deflection.

Overall, it would be fair to say the UK's ultimate relationship with(in) the European Union is impossible to predict. Many already regard the UK as a peripheral partner in the EU, and see the in/out referendum as an opportunity to settle the issue of the UK's place in Europe one way or another. However, even in the event of an affirmative vote for continued EU membership the [European Union Act 2011](#) may make this difficult in practice, requiring as it does a referendum on any future EU treaty change impacting on the balance of competences between the UK and EU. This presents a dilemma for other EU members seeking deeper integration by treaty reform that would be subject to a UK referendum ahead of parliamentary ratification.

Although opinion polls tend to suggest the 'yes' side is moving ahead in the question of UK membership, the real debate has yet to begin. That is likely to happen after the December European Council when we expect clarity on the UK 'asks' as well as the response of the other Member States to these. As the Scottish referendum demonstrated, voting intentions can shift radically over a relatively short period of time.

Finally, the 'constitutional' stakes in the forthcoming referendum are not only about the UK and the EU. If the UK as a whole votes to exit the EU, but the majority in Scotland wish to remain part of the EU, would this trigger a second referendum on Scottish independence? Polling does indicate that a majority in Scotland presently favour continued EU membership. Moreover, as many of the 'Scotland in Europe' questions were discussed in the course of the 2014 referendum debate, this majority is likely to be less fragile than elsewhere in the UK. Therefore such an outcome cannot be discounted. Nor can its constitutional consequences for the UK itself.

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